

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

PETER KEVIN LANGAN,

Petitioner,

vs.

B. A. BLEDSOE,

Respondent.

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CIVIL NO. 08-cv-209-JPG

MEMORANDUM AND ORDER

GILBERT, District Judge:

The Court denied Petitioner's motion for leave to appeal *in forma pauperis*, finding that the appeal was not taken in good faith. Petitioner now challenges that ruling (Doc. 9), taking issue with the Court's use of the term "frivolous" in reference to his underlying habeas corpus petition.

This action was previously dismissed pursuant to 28 U.S.C. § 2254 Rule 4. Implicit in such a dismissal is a finding that the petition for writ of habeas corpus was *legally* frivolous, *Johnson v. Gramley*, 929 F.2d 350, 351 (7th Cir. 1991), as that term is used in 28 U.S.C. § 1915(e)(2), *i.e.*, that the petition "lacks an arguable basis either in fact or law." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). When the underlying district court action is legally frivolous, any appeal from its summary dismissal is legally frivolous, too, and accordingly, the motion for reconsideration or, in the alternative, recusal, is **DENIED**.

IT IS SO ORDERED.

Dated: June 17, 2008.

s/ J. Phil Gilbert

U. S. District Judge